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DEPT. OF TRANSPORTATION
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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D. C.

Joint Application of

AMERICAN AIRLINES, INC.
and
LINEA AEREA NACIONAL CHILE,
S.A. (LAN CHILE)

under 49 USC 41308 and 41309 for
approval of and antitrust immunity
for alliance agreement

OST-97-3285-2

JOINT MOTION OF AMERICAN AIRLINES, INC. AND
LINEA AEREA NACIONAL CHILE, S.A. (LAN CHILE)
UNDER 14 CFR 302.39 FOR CONFIDENTIAL TREATMENT

Communications with respect to this document should be sent to:

For American Airlines, Inc.:

GERARD J. ARPEY
Senior Vice President -
Finance and Planning and
Chief Financial Officer
American Airlines, Inc.
P.O. Box 619616, MD 5621
DFW Airport, Texas 75261

ARNOLD J. GROSSMAN
Vice President - International
Affairs
American Airlines, Inc.
P.O. Box 619616, MD 5635
DFW Airport, Texas 75261

DAVID A. SCHWARTE
Managing Director, Inter-
national Affairs
American Airlines, Inc.
P.O. Box 619616, MD 5635
DFW Airport, Texas 75261

WILLIAM K. RIS, JR.
Vice President - Government
Affairs
American Airlines, Inc.
1101 17th Street, N.W.
Suite 600
Washington, D.C. 20036

CARL B. NELSON, JR.
Associate General Counsel
American Airlines, Inc.
1101 17th Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 496-5647
(202) 857-4246 (fax)
carl_nelson@amrcorp.com
(email)

11 pgs

GARY R. DOERNHOEFER
Senior Attorney
EUGENE A. BURRUS
Attorney
American Airlines, Inc.
P.O. Box 619616, MD 5675
DFW Airport, TX 75261
(817) 967-6930

For Linea Aerea Nacional Chile, S.A. (Lan Chile):

CHARLES J. SIMPSON, JR.
LONNIE A. PERA
DAVID HEFFERNAN
Zuckert, Scoutt & Rasenberger,
L.L.P.
888 17th Street, N.W.
Washington, D.C. 20006
(202) 298-8660
(202) 342-0683 (fax)

December 23, 1997

BEFORE THE
DEPARTMENT OF TRANSPORTATION
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Joint Application of :
: AMERICAN AIRLINES, INC. :
: and : OST-97-
: LINEA AEREA NACIONAL CHILE, :
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JOINT MOTION OF AMERICAN AIRLINES, INC. AND
LINEA AEREA NACIONAL CHILE, S.A. (LAN CHILE)
UNDER 14 CFR 302.39 FOR CONFIDENTIAL TREATMENT

American Airlines, Inc. and Linea Aerea Nacional Chile, S.A. (Lan Chile), under 14 CFR 302.39, hereby jointly move that the Department withhold certain proprietary and commercially sensitive confidential information from public disclosure.

Confidential information is being submitted separately by the joint applicants in connection with their joint application for approval of and antitrust immunity for an alliance agreement. For these documents, we request that access be limited to counsel and outside experts for interested parties.

In support of this motion, American and Lan Chile respectfully state as follows.

I. THE CONFIDENTIAL INFORMATION IS PROTECTED FROM
PUBLIC DISCLOSURE UNDER THE FREEDOM OF INFORMATION
ACT

The confidential information submitted herewith is protected from public disclosure under various exemptions in the Freedom of Information Act, including 5 USC 552(b)(3) and 5 USC 552(b)(4).¹

Exemption (4) exempts from public disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." This exemption has been construed to prevent public disclosure of information that is not the type usually released to the public, and that if released would cause substantial harm to the competitive position of the person from whom the information was obtained. See, e.g., Gulf & Western Industries, Inc. v. United States, 615 F.2d 527, 530 (D.C. Cir. 1980); American Airlines, Inc. v. NMB, 588 F.2d 863, 871 (2d Cir. 1978); National Parks & Conser-

¹Certain highly detailed financial information has been redacted from the joint applicants' frequent flyer agreements, interline agreement, and prorate agreement, and is being withheld from any disclosure. This is fully consistent with well-established precedent in immunity and other proceedings. See, e.g., Delta/Virgin Atlantic, Order 94-5-43, May x, 1994, p. 4 (the information withheld "is indeed both irrelevant to our review and highly commercially sensitive [and] will not assist parties in addressing the issues raised by the application" (p. 4)). See also United/Lufthansa, Order 93-12-31, December x, 1993, p. 5 n. 5; American/Air Cal, Order 87-2-33, February 14, 1987; USAir/Piedmont, Order 87-4-39, April 15, 1987.

vation Ass'n v. Kleppe, 547 F.2d 673, 684 (D.C. Cir. 1976); Joint Application of Delta and Virgin Atlantic, Order 94-5-42, May 28, 1994; Joint Application of United and Lufthansa, Order 93-12-32, December 18, 1993; Joint Application of Northwest and KLM, Order 93-1-11, January 8, 1993, p. 19; Information Directives Concerning CRS, Order 88-5-46, May 22, 1988; Carrier-Owned Computer Reservations Systems, ER-1385, Order 86-5-54, May 19, 1986; Information Directives Concerning CRS, Order 83-12-136, December 29, 1983. The purpose of these exemptions "is to protect the confidentiality of information which citizens provide to their government, but which would customarily not be released to the public, and to facilitate citizens' ability to confide in their government." Burke Energy Corp. v. DOE, 583 F.Supp. 507, 510 (D. Kansas 1984).

For information to qualify for exemption (4), the information must be (1) commercial or financial in nature, (2) obtained from a person, and (3) privileged or confidential. See Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1290 (D.C. Cir. 1983). All of the confidential information submitted by the joint applicants satisfies this three-part test.

First, the confidential information is commercial or financial in nature, in that it relates to commercially sensitive, proprietary, and privileged financial and corporate

information. This type of confidential information is proprietary and commercially sensitive, and would not otherwise be made public. It is being submitted to the Department so that the Department can expeditiously evaluate the public interest benefits that will result from granting approval of and anti-trust immunity for the American/Lan Chile alliance.

Second, the information has been "obtained from a person" within the meaning of exemption (4).

Third, the information is "confidential." This confidential information is not available to the public, and its public disclosure is not required to further the public interest or to promote competition. In National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974), the Court held that information is "confidential" for purposes of exemption (4) if it would not customarily be released to the public by the person from whom it was obtained, and if disclosure is likely to have either of the following results: "(1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained."

American and Lan Chile submit that public disclosure of the type of confidential information at issue here would cause substantial harm to their respective competitive posi-

tions, and could impair the Government's ability to obtain similar information on a voluntary basis from individuals in the future.

In addition, withholding the information from public disclosure is also provided for under exemption (3). Exemption (3) pertains to information specifically exempted from disclosure by some other statute, such as 49 USC 40115. The release of the information which is the subject of this motion may "prejudice the formulation and presentation of positions of the United States in international negotiations" with foreign governments, and would therefore be inconsistent with 49 USC 40115.

The Department has also ruled that U.S. carrier aircraft cost data submitted under Form 41 should be withheld from public disclosure under former Section 1104 of the Act (now 49 USC 40115) because of the competitive harm that would result to the filing carriers if such data were revealed to foreign carriers not required to file the same information. See letter of November 1, 1993 from James W. Mitchell to American Airlines, Docket 48800; see also United/Lufthansa, supra, Order 93-12-32, p. 4. The release of the sensitive commercial information subject to this motion would have similar adverse impacts on the joint applicants if it is

obtained by competitors that are not required to submit similar information.

II. ACCESS TO THESE HIGHLY SENSITIVE DOCUMENTS SHOULD BE LIMITED TO COUNSEL AND OUTSIDE EXPERTS

American and Lan Chile are submitting highly sensitive internal corporate documents, studies, surveys, analyses, reports, and data which should be accorded limited access. Such access should be granted only to counsel and outside experts who file Rule 39 affidavits stating that the affiant will (1) use the information only for the purpose of participating in this proceeding, and (2) not disclose such information to anyone other than counsel or outside experts who have filed a valid affidavit.

The subject materials contain highly sensitive commercial information relating to international planning and strategic decision-making by American and Lan Chile. The information contained in these documents has not been publicly released. If released, competitors would gain valuable insights into each carrier's internal strategies and objectives with respect to the most competitively sensitive matters relating to their individual business plans and strategies and to their proposed relationship.

In order to minimize the risk of harmful disclosure of this competitively sensitive information, access should be strictly limited, as requested. American and Lan Chile are

separately filing, concurrently with this joint motion, three copies of this information, in sealed cartons labeled "Confidential Treatment Requested Under 14 CFR 302.39; Access Is Limited To Counsel Or Outside Experts Who Have Filed Valid Affidavits."

The request to limit disclosure to counsel and outside experts is fully consistent with Department precedent and policy. Thus, in United/Lufthansa, Order 93-12-32, supra, the Department granted the applicants' request to limit access to certain confidential information to counsel and outside experts who filed Rule 39 affidavits. In so limiting such access, the Department balanced the disclosure of the confidential information against the competitive harm to the applicants that would result if access were expanded, and concluded that "the undue competitive harm to the applicants outweighs the commenters' need for expanded access to the highly sensitive material in this case" (p. 5). The Department also noted that "interested parties to this proceeding can obtain adequate advice on the merits of the application through outside experts and persons authorized to review the materials" (id.). See also, e.g., Joint Application of American and Canadian International, Order 96-1-6, January 11, 1996, p. 3.

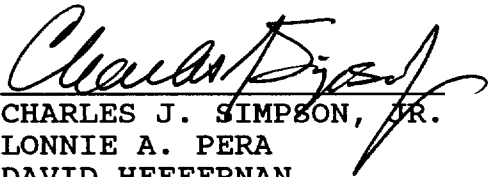
Access to the joint applicants' internal documents and data should be limited in a comparable manner, in light of

the undue competitive harm to the joint applicants that would result from a broader disclosure of such highly sensitive information.

CONCLUSION

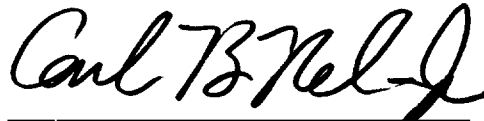
The Department should grant the joint applicants' motion to withhold certain proprietary and commercial sensitive confidential information from public disclosure, as requested herein.

Respectfully submitted,



CHARLES J. SIMPSON, JR.
LONNIE A. PERA
DAVID HEFFERNAN
Zuckert, Scoutt & Rasenberger,
L.L.P.

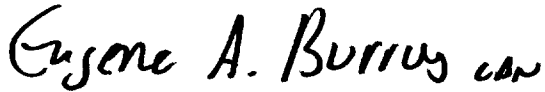
Counsel for Lan Chile



CARL B. NELSON, JR.
Associate General Counsel
American Airlines, Inc.



GARY R. DOERNHOEFER
Senior Attorney
American Airlines, Inc.

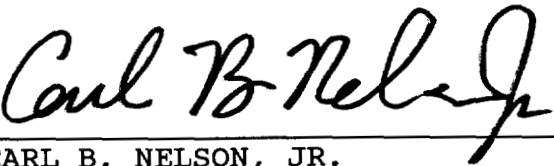


EUGENE A. BURRUS
Attorney
American Airlines, Inc.

December 23, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by first-class mail on all persons named on the service list attached to the joint application of American Airlines, Inc. and Lan Chile for approval of and antitrust immunity for alliance agreement.



CARL B. NELSON, JR.

December 23, 1997